Supreme Court, U.S.
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No. 94-515

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

JANET MITCHELL, Individually and as Personal Representative and Heir of the Estate of MIKE MITCHELL, Deceased; JANET MITCHELL as Next Friend of VALERIE NICOLE MITCHELL and CLAYTON LEE MITCHELL, her Minor Children; and DALE MITCHELL,

Petitioners,

vs.

AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL; RAYMOND A. MARTIN, M.D., Individually and in his official capacity as Medical Director of the Department of Anesthesia of AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL; and RAYMOND A. MARTIN, M.D., P.A.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

BRIEF IN OPPOSITION OF RESPONDENT, AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL

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QUESTION PRESENTED

Whether the treatment of a voluntary patient by a hospital which happens to be part of a governmental hospital district transforms a state law medical malpractice tort claim into a cause of action under 42 U.S.C. §§ 1983 *et seq.* merely because the hospital is a governmental entity.

PARTIES

Counsel of record certifies that the following list of persons have a direct interest in this case:

Petitioners/Plaintiffs:

1. JANET MITCHELL on behalf of herself, the Estate of Mike Mitchell, Deceased, and her minor children, VALERIE NICOLE MITCHELL and CLAYTON LEE MITCHELL.

2. DALE MITCHELL, father of Mike Mitchell, Deceased.

Respondents/Defendants:

1. AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL.

2. RAYMOND A. MARTIN, M.D., Individually and in his official capacity as Medical Director of the Department of Anesthesia of AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL.

3. RAYMOND A. MARTIN, M.D., P.A.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 5

ARGUMENTS AND AUTHORITIES 5

I. REASONS FOR DENIAL OF WRIT OF CERTIORARI 5

II. PETITIONERS FAILED TO ALLEGE A CAUSE OF ACTION FOR DEPRIVATION OF SUBSTANTIVE DUE PROCESS RIGHTS IN VIOLATION OF THE FOURTEENTH AMENDMENT ... 7

III. PETITIONERS FAILED TO ALLEGE A CAUSE OF ACTION FOR DEPRIVATION OF PROCEDURAL DUE PROCESS RIGHTS IN VIOLATION OF THE FOURTEENTH AMENDMENT 8

CONCLUSION AND PRAYER 10

TABLE OF AUTHORITIES

Page

Cases:

Baker v. McCollan,
443 U.S. 137, 99 S. Ct. 2689 (1979) 7

Bradberry v. Pinnales County,
789 F.2d 1513 (11th Cir. 1986) 7

Collins v. City of Harker Heights,
503 U.S. ___, 112 S. Ct. 1061 (1992) 5-8, 10

Lewellen v. Metropolitan Gov't of Nashville and Davidson County, Tennessee, No. 93-5061, 1994 WL 459270
(6th Cir. Tenn., Aug. 25, 1994) 6

Zinnernon v. Birch,
494 U.S. 113 (1990) 9

Statutes:

TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 *et seq.* 2-4

Codes:

42 U.S.C. § 1983 ..... 2-4, 6, 7, 10

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BRIEF IN OPPOSITION OF RESPONDENT, AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL

TO THE HONORABLE SUPREME COURT:

The Respondent, AMARILLO HOSPITAL DISTRICT d/b/a NORTHWEST TEXAS HOSPITAL, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by Petitioners.

OPINIONS BELOW

The Order of the 181st Judicial District Court in and for Potter County, Texas dismissing Petitioners' First Amended Petition After Consolidation is not published but is reproduced in the Appendix to Mitchell's Petition for Writ of Certiorari at A-41. The opinion of the Seventh Court of Appeals of Texas is published at 855 S.W.2d 857 and is reproduced in the Appendix to Mitchell's Petition for Writ of Certiorari at A-3. The Orders of the Supreme Court of Texas denying Petitioners' Application for Writ of Error and Motion for Rehearing of the Application for Writ of Error were not published but are reproduced in the Appendix to Mitchell's Petition for Writ of Certiorari at A-1 and A-2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment to the Constitution of the United States.

2. 42 U.S.C. § 1983.

3. TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 *et seq.*

STATEMENT OF THE CASE

Amarillo Hospital District is a governmental subdivision of the State of Texas which owns and operates Northwest Texas Hospital in Amarillo, Texas. On the evening of February 24, 1987, Mike Mitchell was admitted to Northwest Texas Hospital by Dr. Marc Tuel. Mr. Mitchell had previously undergone heart surgery at another

hospital. He was thought to be suffering from a cardiac tamponade, a serious health risk related to the surgery. Mr. Mitchell's surgeon, Dr. John Baay, and other physicians determined that immediate surgical correction of the cardiac tamponade was necessary, so more surgery was performed that evening. The anesthesia was administered by James Adamson, a Certified Registered Nurse Anesthetist (CRNA). Adamson was a member of the American Association of Nurse Anesthetists and was licensed by the Texas Board of Nurse Examiners. During the surgical procedure, Mr. Mitchell suffered a cardiac arrest and subsequently died on January 10, 1990.

Petitioner Janet Mitchell initially brought suit individually and as guardian of her husband, Mike Mitchell, and their children against Anderson, Baay, and the hospital. This suit originally alleged only negligent medical care. Petitioners amended their pleadings to add Respondent Martin and to allege a claim against Amarillo Hospital District for violation of 42 U.S.C. § 1983. AHD specially excepted to the Section 1983 claims and the trial court sustained the exceptions. Petitioners attempted to replead their Section 1983 claims in several amended petitions. Amarillo Hospital District specially excepted to each of Petitioners' Section 1983 allegations, and each time the trial court sustained the special exceptions. Eventually, Petitioners settled their claims against Adamson and Baay for $1,200,000.00. Petitioners again amended their pleadings, continuing to assert claims against Amarillo Hospital District under 42 U.S.C. § 1983, but abandoning their claims against Amarillo Hospital District under the Texas Tort Claims Act (TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 *et seq.*). Amarillo Hospital District again excepted to Petitioners' petition, the trial court granted the exceptions, Petitioners elected to stand on their

pleadings, and the trial court thereupon dismissed all claims against Amarillo Hospital District.

Amarillo Hospital District very strongly challenges the scurrilous factual allegations made against it by Petitioners in their pleadings and in their Application for Writ of Certiorari. Amarillo Hospital District acknowledges, however, that the factual allegations in the pleadings, however groundless they may be, are accepted as true for the purposes of the special exceptions. Amarillo Hospital District will, therefore, not undertake to challenge each of the incorrect assertions of fact made by Petitioners. However, the factual issues actually involve only the following: whether James Adamson made an appropriate choice of anesthetic agents, whether he monitored appropriately, and whether, upon evaluating Mr. Mitchell's condition, he should have contacted the anesthesiologist on call for a consultation.

These issues involve merely an ordinary tort law medical malpractice case. Amarillo Hospital District, as a governmental unit, is immune from such claims under the doctrine of sovereign immunity, except to the extent its immunity is waived under the provisions of the Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 *et seq.* Amarillo Hospital District's liability is limited to the amount of $100,000.00 under the Texas Tort Claims Act. Petitioners are attempting to turn this ordinary state tort law medical malpractice case into a constitutional claim under 42 U.S.C. § 1983 so as to avoid the damage limitations under the Texas Tort Claims Act.

SUMMARY OF THE ARGUMENT

I. Reasons for denial of Writ of Certiorari.

II. Petitioners failed to allege a cause of action for deprivation of substantive due process rights in violation of the Fourteenth Amendment.

III. Petitioners failed to allege a cause of action for deprivation of procedural due process rights in violation of the Fourteenth Amendment.

ARGUMENTS AND AUTHORITIES

I.
REASONS FOR DENIAL OF WRIT OF CERTIORARI

This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction. This case presents no novel question of law and the courts below fully considered and correctly decided the issues under this Court's prior controlling decisions. The decisions of the trial court, the Texas Court of Appeals, and the Texas Supreme Court below do not decide a federal question in a way that conflicts with the applicable decisions of this Court or of any of the federal courts of appeals. This case merely represents an effort on the part of Petitioners to transform an ordinary state tort law medical malpractice case into a Section 1983 constitutional claim in order to avoid the damage limitations applicable under state law.

This Court addressed issues very similar to the question at issue in this case in *Collins v. City of Harker Heights,* 503 U.S. ____, 112 S. Ct. 1061 (1992). Petitioners

seek to use this Court's scarce judicial resources to clarify *Collins* for them even though the trial court, Texas Court of Appeals, and Texas Supreme Court had no difficulty interpreting it. Furthermore, the recent decision in the Sixth Circuit case, *Lewellen v. Metropolitan Gov't of Nashville and Davidson County, Tennessee,* No. 93-5061, 1994 WL 459270 (6th Cir. Tenn., Aug. 25, 1994), demonstrated that courts are having no difficulty applying *Collins* appropriately.

Collins rejected efforts to transform ordinary tort law claims into constitutional claims under the guise of 42 U.S.C. § 1983. In *Collins*, this Court enunciated a test which has been uniformly applied since *Collins* and was specifically applied by the Texas Court of Appeals in this case. This Court held in *Collins* that for governmental conduct to rise to the level of constitutional dimensions, it must "shock the conscience *in a constitutional sense.*" (Emphasis added.) Petitioners focus on the "shocks the conscience" portion of the *Collins* test. Petitioners treat this language like another level of culpability such as negligence, recklessness, or deliberate indifference. They have simply not grasped the importance of the rest of the *Collins* test. The culpable conduct must shock the conscience *in a constitutional sense.* Petitioners have made repeated bold attempts to allege egregious conduct rising to the level of culpability which "shocks the conscience," but they have consistently failed to allege conduct that is culpable in a constitutional sense, so as to distinguish it from an ordinary state law medical malpractice tort. The *Collins* test is clear, it was applied correctly in this case, and no further amplification of it is necessary.

II.
PETITIONERS FAILED TO ALLEGE A CAUSE OF ACTION FOR DEPRIVATION OF SUBSTANTIVE DUE PROCESS RIGHTS IN VIOLATION OF THE FOURTEENTH AMENDMENT

The first inquiry in any Section 1983 case is whether the plaintiff has been deprived of a right secured by the Constitution and laws of the United States. If there has been no such deprivation, the state of mind of the defendant is wholly immaterial. *Baker v. McCollan*, 443 U.S. 137, 140, 99 S. Ct. 2689 (1979). The allegation of a *constitutional deprivation* is the threshold requirement of Section 1983 liability that Petitioners have failed to meet in this case.

Amarillo Hospital District is not liable under Section 1983 for any harm allegedly caused by its anesthesia policy simply because it is a governmental hospital. Petitioners' Section 1983 claims are an attempt to litigate a state law tort claim as a federal constitutional claim under the guise of 42 U.S.C. § 1983. *Bradberry v. Pinnales County*, 789 F.2d 1513, 1514 (11th Cir. 1986).

These issues were decided in *Collins* and need not be revisited in this case. In *Collins*, the Court rested its refusal to characterize the city's alleged omissions as arbitrary in a constitutional sense "on the presumption that the administration of government programs is based on a rational decision-making process that takes account of competing social, political, and economic forces." 112 S. Ct. at 1070. The Court noted that decisions concerning aspects of a sewer maintenance program in the City of Harker Heights should be made by locally elected representatives rather than by federal judges interpreting the

basic charter of government for the entire country. The same is obviously true for the decisions regarding various aspects of running a hospital and providing anesthesia for operating rooms by a hospital district. The courts below were guided by the clear and applicable provisions of *Collins*. Petitioners are dissatisfied with the result of their case in light of *Collins* and therefore seek a re-interpretation in hopes of achieving a more favorable result. This is not called for, it is unnecessary, and it is improper.

III.
PETITIONERS FAILED TO ALLEGE A CAUSE OF ACTION FOR DEPRIVATION OF PROCEDURAL DUE PROCESS RIGHTS IN VIOLATION OF THE FOURTEENTH AMENDMENT

Just as Petitioners failed to allege a substantive due process violation in this case, they also have no procedural due process claim. Petitioners are obviously dissatisfied with the analysis of their procedural due process claim in the courts below. However, Petitioners' Petition for Writ of Certiorari fails to demonstrate any need for further review of that analysis in this Court.

Like their substantive due process claim, Petitioners' procedural due process claim, when cast in its most favorable light, is still, at most, analogous to the ordinary state law tort of failure to obtain informed consent. Such a claim does not rise to misconduct "in a constitutional sense." *Collins* does not distinguish between substantive and procedural due process in holding that constitutional violations must be conscience-shocking in a constitutional sense. There is no indication that the decision in *Collins* would somehow have been different had there been an

allegation that the conduct was a violation of procedural, as well as substantive, due process.

Petitioners erroneously state that this case is indistinguishable from *Zinnernon v. Birch*, 494 U.S. 113 (1990). On the contrary, the distinction is obvious. *Zinnernon* involved the *intentional* confinement of a patient by a state hospital. The present case involves an *unintended* poor outcome of a hospital surgical patient. The *Zinnernon* procedural due process analysis examines the procedures employed leading up to the confinement of the mental patient. Such an analysis is inappropriate when examining the treatment rendered to a patient who suffers an unintended adverse medical result. A procedural hearing process, in the face of the medical emergency Mike Mitchell faced, is inappropriate and, under the circumstances, the post-deprivation remedies available to him and Petitioners is constitutionally adequate. Furthermore, Petitioners have taken advantage of their post-deprivational remedies settling their tort claims against the nurse anesthetist and surgeon for $1,200,000.00. Additionally, Petitioners had an additional remedy against Respondent Amarillo Hospital District under the Texas Tort Claims Act but have abandoned that remedy in their pursuit of a higher monetary award.

The review of Petitioners' procedural due process claims in the courts below was consistent with the Fourteenth Amendment to the United States Constitution and the opinions of this Court construing that amendment. Petitioners' dissatisfaction with the result in the courts below does not warrant the discretionary jurisdiction of this Court.

CONCLUSION AND PRAYER

The courts below correctly held that Petitioners have failed to allege the deprivation of constitutional rights and have not pleaded a cause of action against Amarillo Hospital District under 42 U.S.C. § 1983. The decision of the courts below are not in conflict with the opinions of this Court, particularly *Collins v. City of Harker Heights.*

Amarillo Hospital District prays that the Court deny Petitioners' Petition for Writ of Certiorari because the case presents no issue appropriate for the Court's review, and because the lower courts' holdings were not in error.

Respectfully submitted,

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